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Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel
24-28 March 2003

Proposal by New Zealand

1. A significant shortfall in the scope of application of the United Nations Convention on the Safety of United Nations and Associated Personnel was identified in the report of the Secretary-General entitled "Scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel".[1]

2. Under the current provisions of the Convention, automatic application of the Convention is limited to United Nations operations established with the purpose of maintaining or restoring international peace and security, i.e. peacekeeping operations (article 1 (c) (i)). Application of the Convention to all other United Nations operations, such as United Nations political missions, post-conflict and peace-building offices, or humanitarian missions, is conditional on a "declaration of risk" first being issued by the Security Council or the General Assembly (article 1 (c) (ii)). No such declaration of risk has been issued since the Convention was adopted.

3. The effect of these provisions is to place a political and procedural obstacle in the way of the application of the Convention. They also create ambiguity in the application of the Convention, which is inappropriate in a law enforcement treaty. As a result, a significant number of United Nations operations, and therefore the United Nations personnel involved, are not automatically covered by the Convention. The cases of recent United Nations political and humanitarian missions in Afghanistan, Burundi and East and West Timor identified in the Secretary-General's report are illustrative of the inadequacy of the current regime. Many current operations, such as the national unexploded ordnance programme in the Lao People's Democratic Republic (UXO LAO) or the Accelerated Demining Programme (ADP) in Mozambique, also fall outside the application of the Convention. Personnel engaged in such operations are typically unarmed civilian personnel and accordingly are more vulnerable to attack and other acts of violence.

4. The Secretary-General, in his most recent report, entitled "Safety and security of humanitarian personnel and protection of United Nations personnel",[2] indicated that threats against the safety and security of personnel involved in United Nations

operations, including targeted attacks, continue to escalate. To a greater extent than was the case when the Convention was concluded, the full range of United Nations operations, not simply peacekeeping operations, are conducted in increasingly dangerous and volatile environments. Unfortunately, the perpetrators of such acts of violence seemingly operate with impunity, and since 1992, only 22 perpetrators of attacks on United Nations staff have been brought to justice.

5. The General Assembly has expressed recurring concern at the rising toll of casualties and the acts of violence to which personnel involved in United Nations operations are all too frequently exposed.[3] The need to keep under review arrangements for the protection of United Nations and associated personnel was recognized by the General Assembly when it adopted the Convention.[4] In addition to the important practical steps being taken to improve this situation, New Zealand considers that it is important to ensure that an adequate legal regime is in place to make certain that there is no impunity for the perpetrators of such acts. Furthermore, it is important that the criminal law regime of the Convention is as clear as possible and is able to be applied in a non-discriminatory manner.

6. New Zealand accordingly endorses the Secretary-General's recommendation[5] that a protocol be developed to the Convention, to remove the declaration-of-risk trigger mechanism and apply the Convention automatically to all United Nations operations without distinction.

7. To that end, New Zealand has prepared a draft of such a protocol for the consideration of the Ad Hoc Committee (see annex). The draft Protocol consists of a preamble, a substantive clause which would replace the current definition of "United Nations operation" contained in article 1 (c) of the Convention, and a series of provisions governing the relationship between the Protocol and the Convention:

- The preamble of the draft briefly sets out the context for the adoption of the Protocol.
- Drawing on the language proposed in the report of the Secretary-General,[6] draft article 1 sets out the principle that the Convention shall apply to "all United Nations operations or presences established in a host country pursuant to a standing or specific mandate of a United Nations competent organ consistent with the Charter of the United Nations and conducted under United Nations authority and control". The definition of "United Nations operation" in article 1 (c) of the Convention would accordingly no longer apply. The intended effect of this provision would be to bring all United Nations personnel operating in the field — whether in peacekeeping operations, political or humanitarian missions or offices — within the regime of the Convention.
- Draft article 2 provides that for Parties to the Protocol, the Protocol and the Convention shall be interpreted as a single instrument, and that in the event of inconsistency, the provisions of the Protocol shall apply.
- Draft article 3 provides that the Protocol shall remain open for signature by all States, not simply those that are party to the Convention, at United Nations Headquarters for a 12-month period.
- Draft articles 4 (1) and (2) provide that the Protocol is open to all States, not simply those that are party to the Convention. Under draft article 4 (3), any

instrument of ratification, acceptance, approval or accession to the Protocol shall also represent consent to be bound by the Convention. This will simplify the process for States that wish to become party to both instruments, but will enable States to continue to become party to the Convention alone if they so wish.

- Draft article 5 sets out a simplified procedure to enable existing States parties to the Convention to become party to the Protocol.

- Draft articles 6, 7 and 8 contain standard final clauses, modelled on those contained in the Convention.

Notes

[1] A/55/637.
[2] A/57/300.
[3] See, for example, General Assembly resolutions 52/126, 52/167, 53/87, 54/192, 55/175, 56/89, 56/217, 57/28 and 57/155.
[4] General Assembly resolution 49/59, fourth preambular paragraph.
[5] A/55/637, paras. 27-33.
[6] Ibid., para. 30.

Annex

Draft Protocol to the Convention on the Safety of United Nations and Associated Personnel to provide for the automatic application of the Convention to all United Nations operations

The States Parties to this Protocol,

Recalling the terms of the Convention on the Safety of United Nations and Associated Personnel ("the Convention"),

Welcoming the important steps that have been taken for ensuring the safety of United Nations and associated personnel, including steps taken by the principal organs of the United Nations,

Deeply concerned over the continuing pattern of attacks against United Nations and associated personnel engaged in United Nations operations including in humanitarian emergencies, and conflict and post-conflict situations,

Convinced of the need to have in place an effective regime for the prevention of attacks against United Nations and associated personnel engaged in United Nations operations, and for the punishment of such attacks,

Desirous, therefore, of extending the protective regime of the Convention to all United Nations operations on an equal basis,

Have agreed as follows:

Article 1
Application of the Convention to United Nations operations

1. The Convention shall apply in respect of all United Nations and associated personnel, as defined in article 1 of the Convention, and to all United Nations operations or presences established in a host country pursuant to a standing or specific mandate of a United Nations competent organ consistent with the Charter of the United Nations and conducted under United Nations authority and control.

2. The provisions of this article shall, for Parties to the Protocol, replace article 1 (c) of the Convention.

Article 2
Relationship between this Protocol and the Convention

The provisions of this Protocol and the Convention shall, for Parties to this Protocol, be interpreted and applied together as a single instrument. In the event of any inconsistency between this Protocol and the Convention, the provisions of this Protocol shall prevail.

Article 3
Signature

This Protocol shall remain open for signature by all States at United Nations Headquarters for the twelve months from x/x/xxxx to x/x/xxxx.

Article 4
Consent to be bound

1. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, accession, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

2. This Protocol shall be open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

3. Any instrument of ratification, acceptance, approval or accession to this Protocol deposited by a State which is not a Party to the Convention shall also represent consent to become party to the Convention.

Article 5
Simplified procedure

1. A State which has deposited before the date of the adoption of this Protocol an instrument of ratification, accession, acceptance or approval of the Convention and which has signed this Protocol in accordance with article 3, shall be considered to have established its consent to be bound by this Protocol twelve months after the date of its entry into force, unless that State notifies the depository in writing before that date that it is not availing itself of the simplified procedure set out in this article.

2. In the event of such notification, consent to be bound by this Protocol shall be established in accordance with article 4, paragraph 1.

Article 6
Entry into force

1. This Protocol shall enter into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Protocol after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 7
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 8
Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.